IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 379 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANUBHAI NARAYANBHAI RATHOD

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 379 of 2002

MR SR DIVETIA with MR RAJESH M AGRAWAL for Petitioner No. 1

MR SUNIL M AGRAWAL for Petitioner No. 1

MS HANSABEN PUNANI Ld. APP for Respondent No. 1

RULE SERVED for Respondents No. 2-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 16/01/2002

ORAL JUDGEMENT

By means of filing this application the petitioner has prayed for quashing and setting aside the

FIR registered against the petitioner vide CR No. I-169/99 with Karelibaug Police Station, Vadodara and the criminal proceedings initiated on the strength of the said FIR.

On the strength of the criminal complaint lodged by one Jasodaben Nathubhai, resident of Nagarvada, Mehtavadi, Vadodara, the Karelibaug Police Station registered a crime for the offence punishable under sec. 363-366 IPC. As per the complaint, the petitioner was responsible for kidnapping a minor Ashaben daughter of Jasodaben. It is also contended in the complaint that Ashaben was 17 years old when she was induced and kidnapped by the petitioner-accused. After the arrest of the accused and on the availability of PW-Ashaben, the Investigating Agency added one more offence i.e. offence punishable under sec. 376 of IPC.

Mr. SR Divetia learned counsel appearing for the petitioner has submitted that girl Ashaben was more than 17 years of age even as per complainant Jasodaben. No offence has been committed by the present petitioner and police has wrongly charge-sheeted the present petitioner. The parties have compounded the matter out of court and the petitioner and victim Ashaben have married to each other. Both of them are staying as husband-wife. The formal marriage had taken place at the consent and assent of complainant Jasodaben Nathusing Parmar.

The present petitioner had prayed for bail as he was arrested in the very offence and at the time of hearing of the bail application, the complainant Jasodaben and victim Ashaben were called by this Court on 1.11.99. It is reflected in the order passed by this Court that the petitioner had married with victim Ashaben with the consent of the complainant. The complainant was also personally present when the application of bail was heard and petitioner-accused was enlarged on bail by this Court.

The submission of Mr. Divetia is that as per the ratio established by this Court in the case of Maganbhai Chimanbhai Vasava vs. State of Gujarat while dealing with Criminal Misc. Application NO. 6268 of 1997 should be applied to the facts of the present case. While dealing with the said application, this Court (Coram: M.S. Parikh, J.) has observed that:

"Even if the offences were not compoundable the parties having settled their disputes amicably, the permission to compound the offence may be

granted and the proceedings might be quashed."

In the cited decision, this Court has referred two other decisions of this Court rendered on 6.6.97 (Coram: M.H. Kadri, J.) delivered in Criminal Misc. Application No. 3144 of 1997 and the decision rendered in Special Criminal Application No. 485 of 1996 (Coram:S.D. Dave, J.).

Mr. Divetia has also placed reliance on the decision of Punjab & Haryana High Court reported in 1994(1) Crimes p. 482 in the case of Mohinder Singh & Ors. vs. State of Punjab & Ors. I agree with the submissions of Mr. Divetia. This is a case wherein this Court should exercise its inherent powers. It is of no use continuing the criminal proceedings as the victim Ashaben has married with the petitioner-accused with the consent of her mother i.e. complainant-Jasodaben. It is likely that the day on which Ashaben has left the house with the accused, might have left the house with the consent of her mother. It is the experience of the society that when the parents are not agreeable to the wishes of a growing children as to their selection of life partner, than the aggrieved parents are tempted to file similar type of complaints.

For short, I am inclined to to allow this application. Hence, this criminal misc. application is allowed. The complaint being CR No. I-169/99 registered with Karelibaug Police Station, Vadodara and the criminal proceedings initiated on the strength of the said complaint are hereby quashed and set aside.

Mr. Divetia learned counsel states that Sessions Case No. 248/99 is still pending before the Sessions Court, Vadodara. So, the criminal proceedings initiated on the strength of the said complaint resulted into Sessions Case No. 248/99 is hereby quashed and set aside.

Rule made absolute accordingly.

(C.K. BUCH, J.)
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